IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 726 of 2007

Gopal Maruti Gurav (Deceased)

his legal heirs:

1. Smt.Kusum Gopal Gurav and Ors.. Appellants

(Orig.Deft-1)

V/s

Shri Vishnu Yshwant Koli

(deceased) his legal hiers:

1/1 Shankarrao Vishnu Koli and Ors.. Respondents

(No.1 and 2 Orig.Plffs and

no.3 orig.deft no.2)

Shri K.S.Patil for the appellant

Shri Umesh Makapure for Resplondents

CORAM:S.R.SATHE,J.

DATED:19th Sept.2007

P.C.:-

1. Heard both the learned Advocates at length.

2. Perused the papers.

3. Appellants original defendants in Regular civil suit

No.21 of 1984 and the Appellant in regular Civil Appeal No.12 of 1992 have preferred this appeal against the order passed by the District Judge, Sangli whereby the appeal filed by the present defendants was in fact allowed and the District Judge, Sangli after setting aside the judgment and decree passed by the trial Court remanded the suit to the trial Court for fresh trial with a direction that if plaintiff moves an application to carry out an amendment the same be allowed.

4. Admittedly, the present Respondents plaintiffs had filed Regular Civil Suit No.21 of 1984 alleging therein that the suit property described in para no.1a and 1B of the plaint is owned and possessed by them but defendants obstructed their peaceful possession, hence the plaintiffs filed suit for permanent injunction.

5. After considering the evidence adduced by both the parties the learned trial Judge decreed the suit in favour of the plaintiffs. Being aggrieved by the same the original defendants filed Regular Civil appeal No.12 of 1992. While hearing the said appeal the learned District Judge, Sangli found that the description of the suit property given in the plaint was very vague. Besides this, the said description did not tally with the description of the property shown in the report of the Commissioner. So, in order to do justice to the parties, the learned District Judge felt that it is necessary to amend the plaint. In that view of the

matter, he allowed the appeal and remanded the suit to the trial Court with a direction to give opportunity to the plaintiff to carry out amendment and give the correct description of the suit property so as to remove the defect of vagueness. He also fixed specific timing for carrying out the amendment.

6. From the submissions made before me it does appear that the description of the suit property given by the plaintiff was vague and moreover the same did not tally with the actual description given in the Commissioner's report. So, under the said circumstances the learned District Judge has remanded the matter. It cannot be said that the said order of remand is illegal or improper. Nor the same can be said to be arbitrary. Moreover, no prejudice is also likely to be caused to the defendants due to remand of the matter.

7. Hence there is no substance in this appeal. The appeal is dismissed in limine.

(S.R.SATHE,J.)